

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Raymond Orrand, Administrator,
et al.,

Plaintiffs,

v.

Case No. 2:13-cv-1121

Deer Creek Excavating, LLC,

Defendant.

ORDER

This is an action brought pursuant to 29 U.S.C. §§185 and 1132 by the administrator and trustees of the Ohio Operating Engineers Health and Welfare Plan, the Ohio Operating Engineers Pension Fund, the Ohio Operating Engineers Apprenticeship and Training Fund and the Ohio Operating Engineers Safety & Education Fund to recover contributions allegedly owed to the funds by defendant Deer Creek Excavating, LLC, a corporation with its principal place of business in Bellville, Ohio. Plaintiffs seek recovery of unpaid contributions, liquidated damages, interest, attorney's fees, court costs and injunctive relief.

This matter is before the court for consideration of the December 1, 2014, report and recommendation of the magistrate judge regarding plaintiffs' motion for summary judgment (Doc. 20) filed on November 7, 2014. Defendant did not respond to the motion for summary judgment. The magistrate judge recommended that plaintiffs' motion for summary judgment be granted. Doc. 21, pp. 4-5. The magistrate judge noted that plaintiffs had submitted uncontroverted evidence that defendant failed to make timely contributions to the funds, as required under a collective

bargaining agreement, for the periods from November 1, 2012, through December 31, 2012, and from January 1, 2013, through April 30, 2013, in an amount totaling \$15,342.10. Doc. 21, pp. 2-3. The magistrate judge further concluded that plaintiffs were also entitled to an award of liquidated damages and interest, as well as attorney's fees and injunctive relief. Doc. 21, pp. 3-4.

The report and recommendation specifically advised the parties that the failure to object to the report and recommendation within fourteen days would result in a "waiver of the right to de novo review by the District Judge and of the right to appeal the judgment of the District Court." Doc. 21, p. 5. The time period for filing objections to the report and recommendation has expired, and no party has objected to the report and recommendation.

The court has reviewed the report and recommendation, and agrees with the findings and conclusions of the magistrate judge. The court adopts the report and recommendation (Doc. 21). The plaintiffs' motion for summary judgment (Doc. 20) is hereby granted. The clerk is directed to enter judgment in favor of the plaintiffs. Plaintiffs are hereby awarded:

1. \$15,342.10 in unpaid contributions from November 1, 2012, through April 30, 2013, pursuant to 29 U.S.C. §1132(g)(2)(A);
2. \$4,753.56 in interest, calculated to November 15, 2014, plus \$7.57 per day thereafter, so long as the judgment remains unpaid, pursuant to 29 U.S.C. 1132(g)(2)(B);
3. \$4,753.56 in liquidated damages, calculated to November 15, 2014, plus \$7.57 per day thereafter, so long as the judgment remains unpaid, pursuant to 29 U.S.C. §1132(g)(2)(C);
4. Court costs in the amount of \$400.00, pursuant to 29 U.S.C. §1132(g)(2)(D);

5. Reasonable attorney's fees pursuant to 29 U.S.C. §1132(g)(2)(D), in an amount to be determined by the court; and
6. Injunctive relief pursuant to 29 U.S.C. §1132(g)(2)(E); specifically, Deer Creek Excavating, LLC, is hereby directed to comply with its contribution and audit obligations under the various agreements set forth in pages 11-13 of the complaint (Doc. 1).

It is further ordered that plaintiffs shall file a properly supported motion for attorney's fees within fourteen days of the date of this order.

Date: December 23, 2014

s/James L. Graham
James L. Graham
United States District Judge